

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform)	WC Docket No. 11-42
And Modernization)	
)	WC Docket No. 03-109
Lifeline and Link Up)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Advancing Broadband Availability)	WC Docket No. 12-23
Through Digital Literacy Training)	

**COMMENTS OF TRACFONE WIRELESS, INC. IN RESPONSE TO
PETITION FOR WAIVER AND CLARIFICATION OF THE
UNITED STATES TELECOM ASSOCIATION, *ET AL***

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments in response to the petition for waiver and clarification filed by the United States Telecom Association, the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, the Western Telecommunications Alliance, and the Eastern Rural Telecom Association.¹ By public notice issued March 9, 2012, the Commission has invited comment on that petition.²

¹ The petition was filed jointly by six organizations which are comprised primarily of wireline local exchange carriers. For convenience, throughout these comments the petition will be referred to as the “US Telecom Petition.”

² Public Notice - Comment Sought on US Telecom *ET AL*, Petition for Waiver and Clarification of Lifeline Reform Order, DA 12-387, released March 9, 2012.

The US Telecom petition asks that the Commission waive or otherwise postpone the effective date of the newly-promulgated rules which establish a flat \$9.25 per month Lifeline reimbursement structure in place of the tiered structure and which eliminate Link Up support for non-tribal lands and modify the calculation of Link Up support for tribal lands. These requests are made specifically for what the US Telecom petition calls “postpaid eligible telecommunications carriers (‘ETCs’).”

That the US Telecom petition seeks such relief for postpaid ETCs is understandable since such ETCs comprise the membership of US Telecom and its co-petitioners. However, the regulatory and operational roadblocks to implementing these and other rule changes within the narrow timeframes established by the Commission are not limited to postpaid ETCs. TracFone is an ETC which provides wireless Lifeline service to qualified low-income consumers. Unlike the postpaid ETCs, TracFone’s Lifeline benefits are not provided as discounts below standard billed rates. Rather, TracFone provides Lifeline benefits in the form of specified quantities of free minutes of use. Its most popular Lifeline plan provides each customer with 250 minutes per month of wireless airtime. As will be explained in these comments, TracFone and other non-“postpaid ETCs” also will need additional time to implement certain of the Commission’s revised Lifeline rules.

Despite the fact that TracFone is a commercial mobile radio service (“CMRS”) provider not subject to state entry or rate regulation pursuant to Section 332(c)(3) of the Communications Act of 1934, as amended,³ TracFone’s status as an ETC designated by state commissions subjects it to various regulatory requirements, including rate approval, advance notification and even tariff filing requirements in many states. TracFone is required to file with state

³ 47 U.S.C. § 332(c)(3).

commissions tariffs as conditions of ETC designation in the following states: Arizona, Illinois, Indiana, Louisiana, Mississippi, and Rhode Island. In addition to those tariff requirements, TracFone is required to provide notification of rate and plan changes to its Lifeline offerings in the following states: Georgia, Michigan, Missouri, Nevada, New Jersey, Ohio, and Washington.⁴

The wireline postpaid ETCs represented by the parties to the US Telecom petition are subject to state tariff requirements which would impede their ability to implement the changes to the Lifeline support and Link Up rules within the deadlines contemplated by the Commission. However, that is true not only for those postpaid ETCs, but for all ETCs since non-incumbent local exchange carrier, non-wireline ETCs are also subject to state regulatory requirements. Accordingly, the relief sought by the US Telecom Petition is reasonable and appropriate. However, it should be available to all ETCs, not only the postpaid ETCs represented by those petitioners.

Importantly, the need for additional time to implement new Commission rules is not limited to the new rules governing support levels and Link Up.⁵ Neither is the additional time needed only for reasons involving state regulatory requirements. The US Telecom Petition notes correctly that impediments to meeting the Commission's deadlines necessitating extension of those deadlines include rule changes which will require ETCs to modify billing systems, internal

⁴ Pursuant to a stipulation executed between TracFone, the Staff of the Oregon Public Utilities Commission, and the Oregon Citizens Utilities Board, TracFone would also be required to provide the Oregon Public Utilities Commission with advance notification of rate and plan changes. That stipulation remains pending before the Oregon Public Utilities Commission.

⁵ TracFone has explained in numerous filings that Link Up is a blatant example of waste, fraud and abuse of Universal Service Fund resources and has long called for its elimination. TracFone was gratified that the Commission has eliminated that program except for tribal areas. Any extension of Link Up should be limited to the minimum time necessary to comply with applicable state requirements.

procedures and employee training materials.⁶ TracFone concurs with that observation. Indeed, the burdens of implementing the necessary operational changes to comply with the new rules will, in some instances, be greater than the regulatory burdens.

For example, the Commission has amended the rules governing certification of enrollment eligibility so as to require ETCs to obtain documentation of consumers' program-based eligibility in states where access to eligibility databases is not available.⁷ The intent of this new "full certification" rule, scheduled to take effect on June 1, 2012, is to encourage states and ETCs to work cooperatively to establish arrangements for access to such state eligibility databases. Currently, several states allow for such database access (*e.g.*, Maryland, Florida, Washington, and Wisconsin). Many other states do not. It will take time and effort by state governments and ETCs to complete the necessary arrangements to allow for such database access. It is unlikely that those arrangements will be completed by June 1, 2012 (about 10 weeks from the date of these comments). More time will be needed. TracFone believes that ETCs should have not less than one year from the rule's effective date before the full certification requirement takes effect. That would afford the states and the ETCs a reasonable opportunity to develop and implement database access arrangements. At the very least, the Commission should postpone the date for full certification until no earlier than October 1, 2012 -- the date requested by the US Telecom petition.

Another example of operational changes which will be necessitated by the rule revisions involves the Commission's new requirement that Lifeline support not commence until a consumer activates a handset. TracFone and other ETCs will have to materially change their processes to comply with this new requirement. Once TracFone determines a Lifeline applicant

⁶ US Telecom Petition, at 6.

⁷ 47 C.F.R. § 54.410(b).

to be qualified for support, it enrolls the customer in its SafeLink Wireless[®] Lifeline program and sends to the consumer a welcome package which contains an activated wireless handset. This process has worked well. Only qualified persons are enrolled and receive handsets, but once they are enrolled, they receive handsets immediately ready for use, sparing consumers the burdensome task of determining how to activate the phone. However, the new rules will require ETCs to provide consumers with not-yet-activated handsets. This change -- which was not identified in the notice of proposed rulemaking nor discussed -- will require ETCs who use this process, including TracFone, to revise their welcome packages, to modify their advertising, marketing and outreach programs to educate customers a) that they must activate their handsets, and b) how to activate their handsets. Implementation of those revised handset distribution procedures will take at least several additional months.⁸ In addition, TracFone will have to modify its own recordkeeping and reporting processes so that customers are not reported to USAC as being active Lifeline customers until the customer has activated the handset. There is no practicable way for any ETC to overhaul its operations and make these changes by April 1.

A related change involves the manner in which enrolled Lifeline customers demonstrate their usage of TracFone's Lifeline service. Since 2009, TracFone has implemented a 60 day non-usage policy. Under that policy, developed in consultation with several state commissions, TracFone de-enrolls from its Lifeline program customers who do not use their Lifeline service for 60 days. In fact, TracFone advocated that the Commission establish the 60 day non-usage policy as requirement and that policy served as the model for the non-usage provision now

⁸ TracFone uses an independent fulfillment center to ship handsets to qualified Lifeline customers. It will need to work with the fulfillment center to change the center's procedures so as to ship handsets not yet activated. This may even require negotiated changes to the contract between TracFone and the fulfillment center.

included in the Commission's rules.⁹ Under the non-usage policy implemented by TracFone in consultation with state commissions, receipt of additional minutes by a Lifeline customer constitutes usage. The reason for this is that consumers must have their handsets charged and turned on when the month's allotment of minutes are sent to the handset (on or about the first day of each month). By keeping the handset charged and having it on when the minutes are to be sent, consumers are engaging in an affirmative act to receive the next month's allotment of minutes. That affirmative act demonstrates an intent by the consumers to receive the minutes and to use the service. TracFone has invested heavily in consumer outreach to educate its Lifeline customers that the handset must be charged and turned on in order to receive minutes.

The definition of usage adopted by the Commission does not include receipt of minutes. Because of this rule change, TracFone will have to reinvest in an entirely new campaign to "uneducate" its customers about receiving additional minutes and to re-educate the customers that usage may only be demonstrated by receiving or sending calls, purchasing additional minutes or responding to direct contact from TracFone. Since the new definition of usage contradicts that which TracFone has utilized since 2009, consumers will have to be instructed as to the changed procedures for demonstrating usage. This process will be costly and will take time to implement and complete. No matter how many resources TracFone commits to this re-education process, it is wholly unrealistic to expect that 3.8 million Lifeline customers in 36 states will change their habits immediately. Accordingly, additional time will be needed to implement this major change to the non-usage procedures.

⁹ 47 C.F.R. § 54.407(c)(2).

In the Lifeline Reform Order, the Commission wisely adopted a rule which will enable ETCs to provide Lifeline service to consumers with no fixed permanent address.¹⁰ This rule, codified at Section 54.410(g),¹¹ represents an important improvement to the Lifeline program since it will enable persons residing in shelters, nursing homes, halfway houses, boarding houses, and other temporary living facilities with an administratively feasible way of obtaining benefits. Since persons residing in such temporary facilities are among the nation's most vulnerable citizens and most in need of Lifeline assistance, this is an important advancement. However, the new rule requires that ETCs serving such consumers inquire every ninety days as to whether they continue to reside at the temporary address.

While the 90 day requirement is well-intentioned, in the short term it will be unworkable. In order to obtain those temporary address certifications, TracFone and other ETCs must begin the process of contacting customers long before the 90 day deadline. Based on experience, TracFone has learned that many consumers will not respond to such inquiries and that repeated attempts must be made by the ETC using a variety of media -- U.S. mail, e-mail (for those relatively few such customers who have e-mail access), SMS text messages, and phone calls to the Lifeline-supported telephone number. TracFone is in the process of developing and implementing new systems and procedures to accommodate the 90 day requirement. Although TracFone is committing substantial resources to this effort, it will not be possible for TracFone to implement the procedures for verifying such customers' living arrangements on April 1. For that reason, the effective date of Section 54.410(g) should be deferred for not less than six months.

¹⁰ In the Matter of Lifeline and Link Up Reform and Modernization, et al, FCC 12-11, released February 6, 2012 at ¶¶ 88-89 ("Lifeline Reform Order").

¹¹ 47 C.F.R. § 54.410(g).

Another reform identified by the US Telecom Petition which will create implementation challenges involves the annual recertification requirement codified at Section 54.407(d) in states with automatic enrollment. In the Lifeline Reform Order, the Commission criticized state automatic enrollment procedures and limited states' ability to require automatic enrollment.¹² TracFone agrees with the Commission's objections to automatic enrollment systems for the very reasons identified by the Commission, including that such systems favor incumbent ETCs and make it difficult for new entrants to compete for Lifeline customers. Automatic enrollment also is a cause of wasteful use of USF resources.

However, the fact that the Commission has sought to limit automatic enrollment does not mean that such systems will disappear in the near term. In some states, automatic enrollment processes are required by state law. For example, in Texas, the Legislature has enacted a statute which mandates automatic enrollment. Unless the Texas Legislature amends the state statute or unless it is preempted by the Commission, the Texas Public Utilities Commission will be faced with the dilemma of having to implement Commission rules and a state statute which are in conflict with each other. It is virtually certain that this conflict will not be resolved in the next several months.¹³ Therefore, in implementing and enforcing the rules recently promulgated in the Lifeline Reform Order, the Commission should be mindful of situations -- like automatic enrollment -- where there may be conflicts between federal requirements and state requirements and that resolution of those conflicts could take many months - or longer.

For the reasons stated in these comments, TracFone agrees with the US Telecom Petition that certain rules recently promulgated are not suitable to immediate implementation and that

¹²*Id.*, at ¶¶ 170-173.

¹³ The Texas Legislature only convenes in odd numbered years. The next session is not scheduled to begin until January 2013.

additional time will be needed, both because of state regulatory constraints and because of operational constraints. Those rules are not limited to the rules governing federal Lifeline support levels and Link Up; nor is the need for additional time limited to postpaid wireline ETCs.

Respectfully submitted,

TRACFONE WIRELESS, INC.

A handwritten signature in black ink, appearing to read 'Mitchell F. Brecher', written over a horizontal line.

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